pawned with a pawnbroker, the Court, on proof of the ownership of the goods and chattels, may, if it thinks fit, order the delivery thereof to the owner either on payment to the pawnbroker of the amount of the loan or any part thereof, or without payment thereof or any part thereof, as to the Court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting.

(2) The Court may also adjourn the proceedings for the attendance of the pawnbroker, and may summon the pawnbroker to attend at the adjourned hearing, and if, after hearing the pawnbroker, the Court is of opinion that the pawnbroker has not exercised due care in taking in pawn any stolen property, the Court may order the pawnbroker to pay a fine not exceeding one hundred dollars.

It seems to me that the proper procedure for the Magistrate to follow will then be to procure the attendance of the pawnbroker under section 28 (2) and satisfy himself that the article was unlawfully pawned under section 31 (1) which provides that:

"Any person who knowingly and designedly pawns with a pawnbroker anything being the property of another person, the pawner not being employed or authorised by the owner thereof to pawn the same, shall be liable to a fine not exceeding one hundred dollars."

He should then record his finding that the article was unlawfully pawned and who is the owner and then make his order.

In the case under consideration these formalities were not complied with and I would send the case back to the Police Court for rehearing.

Terrell, J. I agree.

Case remitted.

Solicitors for the Appellant—*John G. Campbell & Co.*

(Appellate Criminal Jurisdiction)

Murison C. J., Whitley and Terrell, JJ.

January 14, 1933.

PALLAK NATH SINGH.....Appellant

v.

REX.....Respondent

(Singapore Magistrate's Appeal No. 57 of 1932)

Evidence—Words written by suspect at request of Police—Not a statement—Criminal Procedure Code Section 121.

Compensation—Imprisonment in default—Criminal Procedure Codes. 432.

A police inspector invited a person suspected of forgery to write certain names and words on a piece of paper. The magistrate admitted the paper in evidence as evidence of accused's handwriting with a view to comparing it with certain writing on the forged document.

Held:—The writing was not a statement within the meaning of Section 121, Criminal Procedure Code and was properly admitted in evidence.

The Magistrate convicted the accused and imposed sentence of imprisonment and also ordered the accused to pay compensation under section 432 Criminal Procedure Code and sentenced him to additional rigorous imprisonment if the compensation was not paid.

Held:—Rigorous Imprisonment may be imposed for non-payment of compensation which an accused person is ordered to pay under Section 432 of the Criminal Procedure Code.

Appellant was convicted before Charles Wilson Esq., District Judge Singapore on 17th November 1932 for that he at Singapore did forge a memorandum dated 25th July 1932, purporting to be addressed to the Superintendent of Police, Benares, asking for the arrest of Kishore Singh, Raghu Nandan Singh and Jokhu Khan which memo purports to be signed by H. R. Onraet, Inspector General of Police, Singapore, and thereby committed an offence punishable under Section 465 of the Penal Code and was adjudged to pay $150 or 3 months compensation to each of the men who were arrested in India. $250 fine or 3 months in lieu and 2 years R. I. in any case. Imprisonment consecutive if fine not paid.

The Memo was as follows:—

MEMO.

From:—The Inspector General of Police,
Police Department,
Singapore,
Straits Settlements.

To:—The Superintendent of Police,
Police Department,
Benares Div.,
India.

Sir,

I have the honour to notify you that the following named persons were under Police Warrant and have left the Colony without our knowledge. These men have assaulted the Singapore Municipal Sanitary Inspectors for arresting their cows while they were tied at unauthorised town area. The Municipal President Mr. Whitley Bartley applied for the warrant on the 16th June, 1932.

I wish you to investigate into the matter and arrest them, after that direct them to Calcutta. From there I shall send my man to bring them back here.

1. Kishore Singh s/o Jayee Singh
   Village—Nathupur.....Police Station—Ballua.
2. Raghu Nandan Singh s/o Ram Sewak Singh
   Village—Nathupur.....Police Station—Ballua.
3. Jokhu Khan s/o Phaka Khan
   Village—Tanda Kala..... Police Station—Ballua.

These men were milk-seller here in Singapore.

Thanking you in anticipation,

Yours faithfully,
R. H. ONRAET
Inspector General of Police.
25.7.32.

In the course of inquiry as to the author of the forged memorandum Asiatic Inspector Judge interviewed the appellant. In the course of the conversation between them the appellant said that he had written a letter to the police.

This letter formed no part of the case against the appellant. The appellant was asked to prove that he had written that letter by writing certain names and words dictated by Inspector Judge.

Among the names and words so dictated to and written by appellant was the name "R. H. Onraet". This name as written by appellant bore a striking resemblance to the forged signature on the memorandum.

In the course of a search of accused's premises a copy of a letter was found addressed to Whitley Bartley

Esq., Municipal President, Singapore. Mr. Bartley's Christian name is William, not Whitley.

Knowles (*Da Silva* with him) for the appellant. The signing of the names at the request of the Police Inspector is a statement. In effect the signing of the names amounts to the Inspector saying "How do you write these names?" and the accused answers by writing the names on the paper. Such statements must be not merely voluntary but volunteered, *R. v. Lim Ah Seng*, (1 Malayan Law Journal p. 12). The Evidence Ordinance Sec. 25 enacts that no confession to a police officer below the rank of Inspector shall be proved and Sec. 26 states that no confession whilst in custody of a police officer shall be proved unless in the immediate presence of a Magistrate. The law is imperative in excluding what comes from an accused person in the custody of the Police if it incriminates him. Field J. *Queen Empress v. Mathews* I.L.R. 10 Cal. 1022. Webster's Dictionary defines 'Statement' as "The act of stating, reciting, or presenting orally *or on paper* as the statement of a case." This statement is also inadmissible according to the Criminal Procedure Code, Section 121.

Mc Elwaine K.C. (*D.P.P.*) The specimen of handwriting is not a statement to the Police. It is a fact.

Thorne J. held in *Abdullah bin Tembon* v. *Public Prosecutor* 1927 (Perak) unreported that there could not be imprisonment for non-payment of compensation but his attention does not seem to have been drawn to *Tai Khun* v. *P.P. Pahang*, 9 S.S.L.R. Appendix 62. *Eusoff* v. *Municipality*, (1931) S.S.L.R. 81 related to purely civil compensation.

Section 432 authorises compensation "in addition to any other punishment" and it may be enforced as a fine.

Section 433 makes money recoverable. The words "enforced" and "recovered" both apply to compensation under Section 432.

Sections 180 and 438 relate compensation to be paid *to* an accused. Section 180(2) says it shall be recoverable as if it were a fine. It shews that recoverable implies by imprisonment when it says "provided the imprisonment" etc.,

Knowles replied.

Cur. Ad. Vult.

Murison C. J. I have read the judgment which is about to be read by Whitley J. and I agree with it. I would dismiss the appeal.

Whitley J. The appellant in this case was convicted by the District Judge Singapore on the 17th November 1932 on a charge of Forgery under Section 465 of the Penal Code.

The forged document in question was a letter purporting to be signed by R. H. Onraet Inspector General of Police S.S. addressed to the Superintendent of Police Benares India, and requesting him to arrest three persons whose names and addresses were given. The letter was treated as genuine and two of the persons named were arrested and taken into custody to Calcutta. The Singapore police were notified of the arrests and it was then discovered that no such letter had been sent by Mr. Onraet or by the Straits Settlements Police and that the signature was a forgery.

Detective Inspector Judge made enquiries and as a result sent for the appellant, who at his request wrote down several names including R. H. Onraet on a piece of paper which was produced in evidence as Exhibit C. The resemblance which the name on this paper bore to the signature on the forged letter was so striking that Inspector Judge obtained a sanction to prosecute and warrant for arrest of the appellant.

The first ground of appeal was that Exhibit C (which I will refer to as "the document") was inadmissible in evidence as being a statement made by a person to a police officer in the course of a police investigation. If it was such a statement its use as evidence would be governed by section 121 of the Criminal Procedure Code the material parts of which are:—

> 121 (1) No statement made by any person to a police officer in the course of a police investigation made under this Chapter shall save as herein provided be used as evidence.
>
> (2) .....Such statement may be used to impeach the credit of such witness.

The effect of this section is shortly that such statements cannot be used as substantive evidence; they can only be used to impeach credit when the evidence given by a witness at a trial differs materially from the statement which he made to the police.

When this document was written a police investigation was admittedly in progress and the words "any person" in the section include a person who is subsequently arrested and charged like the appellant in this case so that the document was clearly not admissible in evidence if it was a statement.

I am satisfied that it is not a statement. It does not come within any of the definitions in Webster's Dictionary. Nor was it reduced into writing by the police officer as required by section 120(1) which provides that:

> "A police officer making a police investigation..... may examine orally any person.....and shall reduce into writing any statement made by the person so examined."

This document is not something said by the appellant; it is something made by him. I regard it as a most valuable and unimpeachable piece of evidence and open to no possible objection.

As the document is not a statement no question of inducement or spontaneity arises. The sections of the Evidence Ordinance referred to on those points deal only with statements and confessions.

The appellant also appeals on the facts. On that all I have to say is that there was overwhelming evidence upon which the learned District Judge could convict and that in my view he could on that evidence come to no other conclusion.

The last point upon which we were asked to give a ruling was whether it is legal to impose imprisonment in default of payment of costs or compensation ordered under Section 432 (1) (a) and (b) of the Criminal Procedure Code.

The section reads:—

> 432 (1) The Court before which a person is convicted of any crime or offence may, in its discretion make either or both of the following orders against him in addition to any other punishment, namely:—
>
> (a) an order for the payment by him of the costs of his prosecution or such part thereof as the Court directs;
>
> (b) an order for the payment by him of a sum to be fixed by the Court by way of compensation to any person or to the representative of any person injured in respect of his person, character or property by the crime or offence for which the sentence is passed.
>
> (2) The Court shall specify the person to whom any sum in respect of costs or compensation as aforesaid is to be paid, and payment thereof may be enforced in the same manner as if the amount thereof was a fine or in such other manner as the law for the time being directs.

There appears to have been some uncertainty on the point by reason of a judgment of Thorne J. in Ipoh in which he held that imprisonment in default of payment is not a method of recovering a fine. In so holding he was following the ruling of the Court of Appeal in the case of *Eusoff Hadjee Ahmad* v. *Municipal Commissioners of Singapore* decided in 1924 and reported in (1931) S.S.L.R. 61. In that case however the Court were construing a section of the Municipal Ordinance and in the following passage of his judgment at page 85 Shaw C. J. made it clear that his ruling refers only to that ordinance and must not be taken as being of general application:

"In some of the English decisions referred to, how-"ever, for instance *Ex parte Whitchurch*, 7 Q.B.D. 534 "and *Mellor* v. *Denham*, 5 Q.B.D. 467, the Court seems "to have considered imprisonment as a means of 're-"covering' a penalty or sum of money, and in the Sum-"mary Jurisdiction Act, 1848, section 18, imprisonment "is referred to as a means of 'recovering' costs ordered "to be paid by Justices.

"If I were construing an enactment similar in all "terms to those under consideration in the cases referred "to, I might feel constrained by those cases to hold that "order for imprisonment in default of payment is a "method of recovering the fine, and that therefore it is "intended that a person failing to pay money ascertain-"ed to be due under section 362 of the Municipal "Ordinance may be ordered to be imprisoned in default "of payment. The provisions of our Municipal "Ordinance are, however, very different and I think it "is clear that under its provisions no liability to "imprisonment arises.

"When one looks at the provisions contained in "the Ordinance providing for the various ways of "recovering money, it appears quite obvious that the "intention is to provide means for collecting the actual "money, and not to punish persons for not paying the "amount of the debt."

In the present case section 432 uses the word "Enforced" and not "recovered" and the use of the words "in addition to any other punishment" show that the order for the payment of costs or compensation is to be regarded as part of the punishment. Payment may be enforced in the same manner as if the amount thereof was a fine.

The manner in which a Court can enforce the payment of a fine is laid down in section 273 (1) (b):—

> 273 (1) Where any fine is imposed under the authority of any law for the time being in force then, in the absence of any express provision relating to such fine in such law contained, the provisions following shall apply:—
>
> (b) In every case of any offence in which the offender is sentenced to pay a fine the Court passing the sentence may, in its discretion, make both or either of the following orders:—
>
> (i) direct that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be liable under a commutation of the sentence;
>
> (ii) Issue a Warrant for the levy of the amount by distress and sale of any property belonging to the offender.

Furthermore section 64 of the Penal Code provides that:—

> "In every case in which an offender is sentenced to a fine it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence."

In my opinion these sections read in conjunction with section 432 (2) established conclusively that it is competent for a Court which sentences an offender i.e. accused person to pay costs or compensation to direct by the sentence that in default of payment the offender shall suffer imprisonment. Any other conclusion would be totally inconsistent with the wording of section 180 (2) of the Criminal Procedure Code which provides that compensation payable to the accused by the complainant in a frivolous or vexatious complaint shall be recoverable as a fine and that if it cannot be realized "the imprisonment to be awarded shall be simple."

In my view the sentences imposed by the District Judge were neither illegal nor excessive and I would dismiss the appeal.

Terrell J. I agree.

Appeal Dismissed.